IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. _____

TILDEN W. JOHNSON,

Appellant,

vs.

GOODYEAR TIRE & RUBBER CO.
FORD MOTOR COMPANY,

Appellees.

JURISDICTIONAL STATEMENT

Judgment - Opinion Cal. Court of Appeal
Second Appellate Dist., Div. 5
of June 30, 1970

TILDEN W. JOHNSON
5630 Sawtelle Boulevard
Culver City, California 90230
(213) 398-1605 388-7104

In Propria Persona

TOPICAL INDEX

	Page
Table of Authorities	ii
JURISDICTIONAL STATEMENT	1
OPINIONS BELOW	3
JURISDICTION	5
STATUTES INVOLVED	7
QUESTIONS PRESENTED	8
STATEMENT OF THE CASE	9
THE FEDERAL QUESTIONS ARE SUBSTANTIAL.	16
CONCLUSION	22

TABLE OF AUTHORITIES

Cases	Page
Bollinger v. Nat. Fire Ins. Co., 25 Cal. 2d 399	12
Payne v. Lee, 222 Minn. 269	6
Southwest Inv. v. Los Angeles, 235 P. 2d 388	7
Tumey v. Ohio, 47 S. Ct. 437	6
Constitutions	
U. S. Constitution, First Amendment	8
U. S. Constitution, 14th Amendment	2, 5, 6 8, 9, 19
Statutes	
Calif. Cartwright Act - similar to Federal Clayton and Anti-Trust Acts	13
Calif. Code of Civil Procedure, §§170, 1033 and 1034, 956a, 430, 575, 597 and 452	5
Calif. Code of Civil Procedure, § 170	8, 14, 18, 19

Calif. Code of Civil Procedure, §§1033 and 1034 9

Calif. Discovery Act, Calif. Rules of Court 17(b) and 26 5

Calif. Rules of Court 26 9

28 USC §1257(2) 6

28 USC §2103 6

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970
No. _____

TILDEN W. JOHNSON,

Appellant,

vs.

GOODYEAR TIRE & RUBBER CO.
FORD MOTOR COMPANY,

Appellees.

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeal, Second Appellate District of the State of California, Division 5, (hereinafter Calif. Court of Appeal) entered June 30, 1970 and the order of that court denying a petition for a rehearing entered on July 17, 1970 by which judgment and refusal to rehear the said Court affirmed the judgment orders of the Superior Court of the State of California in and for the County of Los Angeles (hereinafter Superior Court) denying on May 24, 1968 a motion after a de facto premature appeal (interlocutory judgment) to vacate the sustaining of demurrers to causes of Action I, III and V and try said causes or dismiss for appealability,

and also appeals denial on June 24, 1968 of a motion to tax costs against Ford Motor Co. for contentions causing an unnecessary appeal of an ambiguously worded judgment and to tax costs of lowest available printing costs of 50% of Ford printing costs. It was urged in in pleadings that due process and equal protection of law guaranteed in the 14th Amendment of U. S. Constitution required granting these moitons.

The said Calif. Court of Appeal, Division 5 consisting of graudates from Harvard, Univ. of Southern Calif., and Stanford that in recent years received $100,000,000.00 from Ford Foundation and syndicated foundations to help said universities secure judgeships for graduates and said foundations owning stock in Ford Motor Company and risk partners of the Ford Motor Co. and Goodyear Tire & Rubber Co. became the highest California State Court in which a judgment - opinion could be had on said Superior Court actions when the California Supreme Court denied a petition for a hearing on August 26, 1970. None declared his adverse interest or disqualified himself.

Appellant submits this Jurisdictional Statement to show that the U. S. Supreme Court has jurisdiction of the appeal and that substantial federal questions are presented, and that Federal Laws and Constitution were violated as said irregular court proceedings deprived appellant of due process of law and

equal protection of law.

OPINIONS BELOW

The orders after a Calif. State 1964 de facto prematurely appealed ambiguously worded judgment that by finding 8 limited action dismissal to just Causes II, IV, and VI of ~~a 6~~ cause action but loosely used "action" in dismissal and the writing of opinions not up to standards for publication covered up a sizable conflict of interest of judges rendering same. Thus in case of prosecution the defense of only an interlocutory judgment would be available resulted in motions denied as aforesaid appealed herein. These orders appear in the Clerk's Transcript of the Superior Court in the certified record on appeal herein. p. 27.

The appealed herein judgment - opinion of the Calif. Court of Appeal appears in the appendix herein Exhibit "A" and is printed in 9 Cal. App.3 d 304 and App. 88 Cal. Rptr. 221. The entire opinion is based on the assumption there was a final federal judgment on the merits res judicata to all possible causes, whereas the federal judgment at best only qualifies as an interlocutory non-appealable judgment on negligence only at which point the federal judge advised filing concurrently in Calif. State Court to determine status of privity requirements for breach of warranty suits from ads, the Calif. law being in flux in 1959.

The order of the Calif. Court of Appeal denying a rehearing on May 17, 1970 appears in the appendix herein, Exhibit "B".

The order of the Calif. Supreme Court denying a hearing on August 26, 1970 appears in the appendix herein, Exhibit "C".

The Clerk's Transcript incorporates by reference the Superior Court Clerk's transcript of disputed judgment of 1964 on affirmative defenses of defendants and those briefs and papers are forwarded for U. S. Supreme Court reference if needed and appears in the record sent to the U. S. Supreme Court herein.

At issue herein is the practice of issuing ambiguous judgments where the Ford Foundation helped raise two hundred million dollars for Harvard, USC and Stanford to give their graduates judicial preference for judicial appointments. These ambiguous judgments enables parties to plead the judgments as only interlocutory if investigation develops but in absence of investigation can be passed off as final judgments on the merits contrary to due process of law.

JURISDICTION

The U. S. Supreme Court has jurisdiction to review the judgment for as construed and applied Calif. Code of Civil Procedure sections 170, 1033 and 1034, 956a, 430, 575, and 597, 452 as well as the California Discovery Act Calif. Rules of Court 17(b) and 26 are so vague and indefinite in meaning as to effectively prevent equal application of law and provide due process of law, and thus repugnant to the provisions of the 14th Amendment of the U. S. Constitution and this matter was urged during Calif. Court proceedings. See pages 2, 12, 13, 17, 30, of Appellant's Opening Brief in judgment appealed herein in record on appeal. See pages 6, 14 and 16 of Appellant's Petition for a Calif. Court of Appeal Rehearing, and pages 2, 3, 4, 6 and 13 of Appellant's Petition for a Calif. Supreme Court Hearing.

On several occasions attorneys for Ford and Goodyear evidently conscious of Ford Foundation owning stock in defendants and their risk bearers and passing money to universities to get judicial promotions for Harvard, USC and Stanford graduates hearing their pleadings took the precaution to default to the face of the complaint by violating Calif. Discovery Act and Rule of Court 17(b) of California. (See footnote in opinion herein showing Goodyear filed no brief as required by law and Rule 17(b) though knowing no res judicata judgment could apply to the abuse of process cause of

action still outstanding and further knowing the Superior Court judge who rendered the res judicata judgment on which they claimed to rely was disqualified for adverse financial interest in their companies and risk bearers.

The dates of filing and entering the actions of the court appealed herein are given in first paragraph of this Jurisdictional Statement and by reference incorporated here.

The Notice of Appeal herein was filed September 24, 1970 and appears in the Record on Appeal.

Thus the U. S. Supreme Court has jurisdiction of these appealable actions combined herein under the provisions of 28 USC, section 1257(2) and said section 1257 generally, and authority under section 2103 of said code to treat as matter reviewable under certiorari any matter herein not strictly appealable because laws as construed and applied are repugnant to provisions of U. S. Constitution 14th Amendment due process clauses.

Cases believed to sustain the court's jurisdiction are Tumey v. Ohio, 47 S. Ct. 437 and Payne v. Lee, 222 Minn. 269 and numerous cases in the annotated 28 USC under section 1257.

STATUTES INVOLVED

Numerous statutes are involved as set forth in preceding Jurisdiction paragraph. In California there is the law as it reads designed to sell the law to the public and then the law as construed and applied, and in this case where a big billion dollar foundation owns stock in hundreds of big corporations and insurance companies and passes hundreds of millions of dollars to universities with graduates on the bench to help said universities put more graduates on the bench, such graduates usually grab the brief of the defense attorney and begin copying it to get favorable consideration, and do not even read the briefs and facts of the appellant in a tort case.

Said sections of the California Code of Civil Procedure appears in the Deering annotated codes under the sections mentioned see Southwestern Inv. v. Los Angeles, 235 P. 2d 388 especially the dissenting opinion for comprehension of the subject.

QUESTIONS PRESENTED

1. Are Calif. Statutes mentioned under Jurisdiction sub-title herein, especially Section 170 of the Calif. Code of Civil Procedure as construed and applied void as repugnant to the due process and equal application of law of 14th Amendment to United States Constitution?

I. E.

2. Where religious foundations for tax and political purposes change de facto religiously controlled former Universities to purported tax-exempt organizations and use said universities to de facto practice law, public relations, and lobby organizations and through deception gain a substantial monopoly of the appellate structure in a state do such appellate courts fail to provide the impartial tribunal a state must provide to meet the due process provisions of the 14th Amendment of the United States Constitution and does the practice violate the First Amendment of the U. S. Constitution forbidding the United States to de facto or construtively make a law effecting the establishment of a religion?

3. Where structures as above when making judgments begin with what is in fact an interlocutory judgment so ambiguously worded as to use terms that enable the interlocutory judgment to be confused with a final judgment so in case of investigation the action can be

defended as only an innocent interlocutory judgment not controlling but if not investigated can be passed of as a final judgment on the merits so violate due process as to make such judgments void per said 14th Amendment?

4. If the phrase "reasonable costs" as used in Calif. Rule of Court 26 and Sec. 1033 and 1034 of the Calif. Code of Civil Procedure is so stretchable and lacking in meaning as to be stretched to double is the phrase so vague and indefinite in meaning as to be repugnant to the due process and equal application of law provisions of the 14th Amendment of the U. S. Constitution and thus void and unenforceable?

STATEMENT OF THE CASE

Looking back at events it is now clear appellant in 1956 became a victim of an unfair use of a foundation to engage in unfair trade practices, abuse of judicial process and use of automobile owners to do the test work on new automobiles, i. e. appellant purchased a new 1955 Ford from a California independent dealer held out as a de facto agent of Ford Motor Co. and Goodyear Tire & Rubber Co. equipped with allegedly designed wheel structure whereby tubeless tires were allegedly cemented to rims formerly used for tube type tires the process greatly increasing the factor of safety

of automobile wheels allegedly.

Said automobile in a cross country trip in May 1956 encountered an improvised semi-permanent detour dirt curve in a field where a former paved cross section of intersecting highways 40 miles East of Denver, Colorado on U. S. Highway 36. The curve was zoned 40 miles per hour with three paths of negotiation. Out of state drivers almost invariably because of speed illusions from a prairie and impressions from traffic in the curve viewed at a distance found themselves using the dirt path of negotiation located off the paved road in a field, i. e. thinking their speed only 20 mph. they were doing 30 mph.

Ford and Goodyear were sued in a 600 word statement of facts enabling the court to recognize negligence, strict liability breach of express and implied warranty, fraudulent advertising. Ford and Goodyear and their de facto agents or risk bearers represented they had test information useful against the Colorado Highway and the case should be filed in U. S. Dist. Court, for Southern Calif., Central Division at Los Angeles, Calif. so it could be transferred to Colorado when test fact made known, and they would help pay the expense of the suit and guarantee some recovery if case so filed.

The case should have been filed concurrently in May 1957 in both the California State Courts and the federal court, but filing

of a state action was delayed on representation of Ford and Goodyear they would guarantee efficacy of the federal action, or make settlement.

The Hon. Wm. C. Mathes (now deceased) of the federal court handling the case 584-57WM was of the opinion - 1958 - after facts began to develop that the case should have been filed in the state court. While many cases in federal court were waiting years for trial, Judge Mathes began a quickie trial in less than a year in February 1958 requiring defendants to bring in the Ford test Engineer Mr. Erwin S. Hagedorn who testified Ford and Goodyear advertised and sold the tubeless tire Fords as designed improved higher factor of safety cars upon his report said tires were safer on straight paved roads at high speeds, but that losses could be expected if the cars required to travel on dirt banked curves, a de facto admission of breach of warranty. Whether the tires failed on the paved road or began loss of air on the paved road was considered. Both appellant and Mr. Hagedorn agreed if the car was swerving in a left turn that the right front rim would scrape pavement if air completely lost on the paved road. Appellant offered a laboratory demonstration showing a paved road swerve if the road was rough could snatch from 1% to 70% of the air from the tire as air was lost at maximum spots of roughness, but testified the first physical evidence of tire failure was the skid mark left in the field after the car was off the paved road and had entered the dirt curve. Judge Mathes agreed if appellant

submitted the case and he could not reach a satisfactory decision he would take the laboratory test in a later further trial.

He announced decision for defendants in negligence all parties to bear their own expenses. Appellant demanded the further trial promised and findings in warranty, strict liability, and fraudulent advertising. This was clearly only an interlocutory judgment on negligence but after specifying the judgment only in negligence Judge Mathes used terms of dismissal of action clearly implying the negligence action similar to sustaining a demurrer without leave to amend in the State Court, and an attempted appeal was dismissed clearly for lack of jurisdiction of the Ninth Circuit. Judge Mathes refused to proceed in 1959 recommending State Court concurrent filing which was done in State Court action 721,951 per the opinion attached hereto.

While the Calif. State Court under Bollinger v. Nat. Fire Ins. Co., 25 Cal. 2d 399 and doctrine of reciprocity could have allowed the Federal filing date of May 7, 1957, the state court so far has used the State filing date of April 30, 1959.

In the State Court filing in April 1959 of later date than federal filing (then a concurrent filing in both courts per Judge Mathes remarks recommending same), appellant took the precaution to file a backing up new cause III and V of unfair use of foundation spending

to engage in unfair trade practices (Calif. Cartwright Act - similar to Federal Clayton and Anti-Trust Acts) and use of foundation spending to maliciously abuse judicial process. This was to be used if the State Court tried to evade allowance of the federal filing date as to personal injury. The State court per due process should try one or both separate claims as stated.

The State court kept the case on appeal, etc. for five years and Judge Philbrick McCoy of Discovery while drawing lecture money from USC put up by the Ford Foundation, owning stock in Ford and insurance companies, permitted pretrial and discovery breaches by Ford and Goodyear calling for issuance of default judgments against them contrary to due process. Defendants urged affirmative defenses of statute of limitations and through pretrial violations concealed they intended to plead the interlocutory Federal Judgment as a final judgment on the merits and res judicata until they advanced the theory at trial of affirmative defenses; they urged at trial as applying to only Causes of Action II, IV and VI of a six count complaint. Judge Hill of Harvard tried the affirmative defenses in April, May 1964, concealing that as a graduate of Harvard he was a holder in trust of a billion dollars of stock and bonds in corporations and 20 insurance companies including both insurance companies and the Ford Motor Co. and after a finding 8 stating his judgment applied to only causes of action II, IV and VI as to Ford and Goodyear held for defendants,

ambiguously using dismissal of action terminology after first having restricted his judgment by the finding 8 leaving causes I, III, and V clearly undismissed. Whereupon appellant moved the Presiding Judge Lloyd S. Nix to restore the case to trial calendar for total trial of all six counts including the new cause V and III to which no statute of limitation was applicable and no res judicata plea available. Judge Nix denied the motion but failed to dismiss causes I, III and V. Since Judge Nix's denial might have been construed as a constructive dismissal of demurrer sustained without leave to amend causes I, III, and V, as to Ford and Goodyear, appellant appealed to Calif. Court of Appeal, 2nd Appellate District, Div. 2 in appeal 30732. Appellant urged in a motion the said appellate court pass on whether the case as it stood was appealable and whether Judge Hill with the undeclared adverse financial interest contrary to section 170 of Calif. Code of Civil Procedure was void. Goodyear did not oppose this motion for clarification, but Ford demanded filing of regular appeal briefs causing appeal expenses to appellant of over $1,600.

When the appeal was heard again adverse financial interest of the appeal panel as shown by the record on appeal was not disclosed, and Justice Pro Tem Katz in the first sentence with a footnote dismissed as non-appealable the Judge Nix denial of further trial thereby in effect dismissing the appeal as premature, interlocutory and non-appealable, but went ahead and wrote a purported opinion just copying the Ford

brief sham argument almost line for line which was declared an opinion not up to standards for publications, and when this matter was called to the court attention in a petition for a rehearing, the appellate courts noting lack of jurisdiction to hear only an interlocutory appeal, just ignored further briefs clearly leaving the Superior Court with the duty to proceed with reconsideration of demurrer sustaining without leave to amend to causes I, III, and V and trial or formal dismissal for appealability.

However, the current opinion shows that now the interlocutory opinion of Judge Hill is trying to be passed off by the California Appellate Courts as a final judgment on the merits. (See appellate briefs part of the record herein.)

This focuses the attention of the U. S. Supreme Court on the questions propounded herein. Exhibits "D", "E" and "F" in exhibit herein are self-explanatory and show a growing trend in the Court of U. S. A. with the advent of 20 billion dollars of tax exempt foundations of recent years that threatens to destroy the judicial fabric and the civilization of the U. S. A. unless cases as here are reviewed by the U. S. Supreme Court and cognizance taken of the new developments and warning reversals issued to correct the abuse of foundation spending and foundation back scratching of the Bar Association and ownership of insurance stock and use of universities to practice law as exhibits shows an attorney practiced law recently in California.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The exhibits in the appendix herein expose a condition that should very much be the chief interest of the U.S. Supreme Court. Exhibit "E" shows how an attorney had a lucrative practice until he made a slip in puffing his ability. Exhibit "F" shows a university practicing law de facto through an alumni with part of the firm on the bench. Exhibit "F" shows the University of Southern California was paid $155,000,000.00 just like a law firm because some organizations liked the services it renders. While what USC is doing has been done on a wider national basis with less drama by Harvard for 100 years, a study of what USC has done in the past ten years might even teach Harvard a lesson in its own methods.

The case herein has been involved with Harvard, USC and Stanford alumni judges and Justices through the federal court and through the state court for 14 years and how said universities get paid by the organizations putting up the $155,000,000.00 is no mystery to appellant. If the U.S. Supreme Court makes a review of this case, the U.S. Supreme Court will discover what is causing the rapid growth in crime which feeds on the breakdown of tort law that occurs when foundations go into the insurance business and when universities practice law and public

relations and lobbying under guise of education and without paying income taxes and acknowledging they are in business and not education.

The newspaper article exhibit "F" shows that as a business operation USC had a gross income of $155,000,000.00 in ten years and had to spend $120,000,000.00 of that sum to maintain political influence and court position and ended with a net profit from operations of $35,000,000.00 in ten years. Had the university by law been permitted to openly practice law and public relations there would have been less deception and more public scrutiny of its operations, and consequently more ethical conduct of its business as aforesaid.

Exhibit "D" shows the Ford Foundation is in fact a business cartel of several hundred companies and in the insurance business on a big scale. The insurance companies paying attorneys to do political work for the foundation while by purported gifts to universities practicing law and infiltering the bench the foundation assist tort feasors to avoid liability for their torts as herein.

For example the foundation dangles a gift of $25,000,000.00 before a university if it will find some one else to match the sum. Of course if the foundation is satisfied with the university management of the law business, the foundation can find someone to match the gift and thus pay $50,000,000.00 for services

or if dissatisfied with service can refuse to help match the fund and leave the university with no gift and thus dominate the conduct of the university business, or if highly intelligent and determined, the university may reverse the shoe and put the zing on the foundation taking all of its net income and leaving nothing for others. Since the public is exposed to these operations why not take courageous action and bring the matter in the open and permit open practice of law by universities with payment of income tax. Had that been done ten years ago the government would have been entitled to about 50% tax on the net income of $35,000,000.00 and appellant might have received partial recovery of his damages.

Now section 170 of the Calif. Code of Civil Procedure states no judge or justice with a pecuniary interest in litigation shall sit or act as a judge and if he does his actions are absolutely void as a matter of law and public policy, and said section also states no attorney who has been an attorney for a party or defendant shall act as a judge. When a university practices law de facto under guise of education, it sits through alumni when it in fact is representing the defendant in the very litigation being adjudicated and is the party at interest perhaps seeking as in the case of Ford most of the final net income of Ford Motor Co. Stanford operates almost exactly as USC is shown to be acting with about the same size and income, and Harvard practices nationally with a more modest

sectional or state income but a wider national general income.

Harvard, USC and Stanford alumni have been kicking my automobile tort case through appeals and trials in federal and state courts for 14 years while they have had a steady retainer or yearly income from the biggest Ford stockholder the Ford Foundation and all together have received through the foundation ties some or about $200,000,000.00.

What is specifically before the court now is the opinion exhibit "A" in appendix herein written by Justice Reppy a graduate of USC and Stanford and Justice Stephens of USC and Justice John Aiso of Harvard all of whom sat without saying a word about their interest in the litigation and how their universities got them the job and how much the universities are getting from the defendants. Appellant submits that when this can happen, it is better to declare Section 170 of Calif. Code of Civil Procedure as construed and applied repugnant to the provisions of the 14th Amendment of the U.S. Constitution. For as now worded it only holds out a mirage of a lake in a desert and is deceptive. People read the law and think they have protection from adverse influence in judicial decisions while as construed and applied the said act is not enforced by the State of California Supreme Court and adverse interest as shown becomes the very essence of construction and application of the sections provisions.

For example the appeal before the panel aforesaid posed the issue that since the trial judge of defendants affirmative defenses was a holder in trust of stock in the insurance companies and the defendant Ford his judgment was absolutely void and knowing of his involvement he took the precaution when making the judgment on defendant's affirmative defenses to make a finding 8 strictly limiting his decision to only causes II, IV and VI as Ford and Goodyear. Thus in case he got investigated or prosecuted for making the decision like Weber, exhibit "E" he provided himself with a defense of only making an interlocutory judgment but muddied up the situation by using the word "action dismissal" leaving one to guess whether he meant the entire complaint or just the action as to his restricted jurisdiction over affirmative defenses to just three of six causes leaving the causes I, III and V undismissed. How judges or justices white-wash such a question is well illustrated by the opinion that no where mentions the question appealed but instead discusses an irrelevant begging of the question, falsely indicating by dismissal of the action (721,951) the entire action was dismissed. The dismissal on the contrary did not use an expression as stated in the opinion but instead wrote a finding 8 strictly limiting the Court's use of the word "action" to mean only the action contained in three of six causes. As a matter of fact a write up as the opinion herein at issue so flagrantly misrepresents the gist of the appeal that an individual could easily lose all confidence in any opinion of a court stating the true facts of

a case.

Appellant submits where conditions as herein show foundations and universities in such an unholy operation it is clear tort law is being broken down over the U. S. A. and not able to take wrongs to a court and get relief is resulting in mobs taking the law into their own hands and cracking heads, burning buildings and showing disrespect. A condition as exposed can and does make a protection racket out of insurance, i. e. they first make the danger like building burning and riots and dangerous car manufacture and then charge the public more for protection.

If the U. S. Supreme Court will review this case in its 14 year travel through the courts with Harvard, USC and Stanford judges and justices, it can make corrections herein that will result in better justice for the public generally.

For example the U. S. Supreme Court should study exhibit 16 in the appendix of the Petition for a California Supreme Court hearing in the record on appeal and note a typical example of how these university gifts arise when a decision the present panel glorifies as due consideration was made.

If the court has time to consider what is transpiring it should read all the briefs filed in the first appeal 30732 appended to this record on appeal for court consideration and observe how a panel of Harvard, USC and Stanford

whitewashes a situation their universities are involved in.

Finally in order to meet the 90 day provision for filing from June 30, 1970, I must close this statement and mail, but if jurisdiction is noted a better documented case can be made in regular briefs.

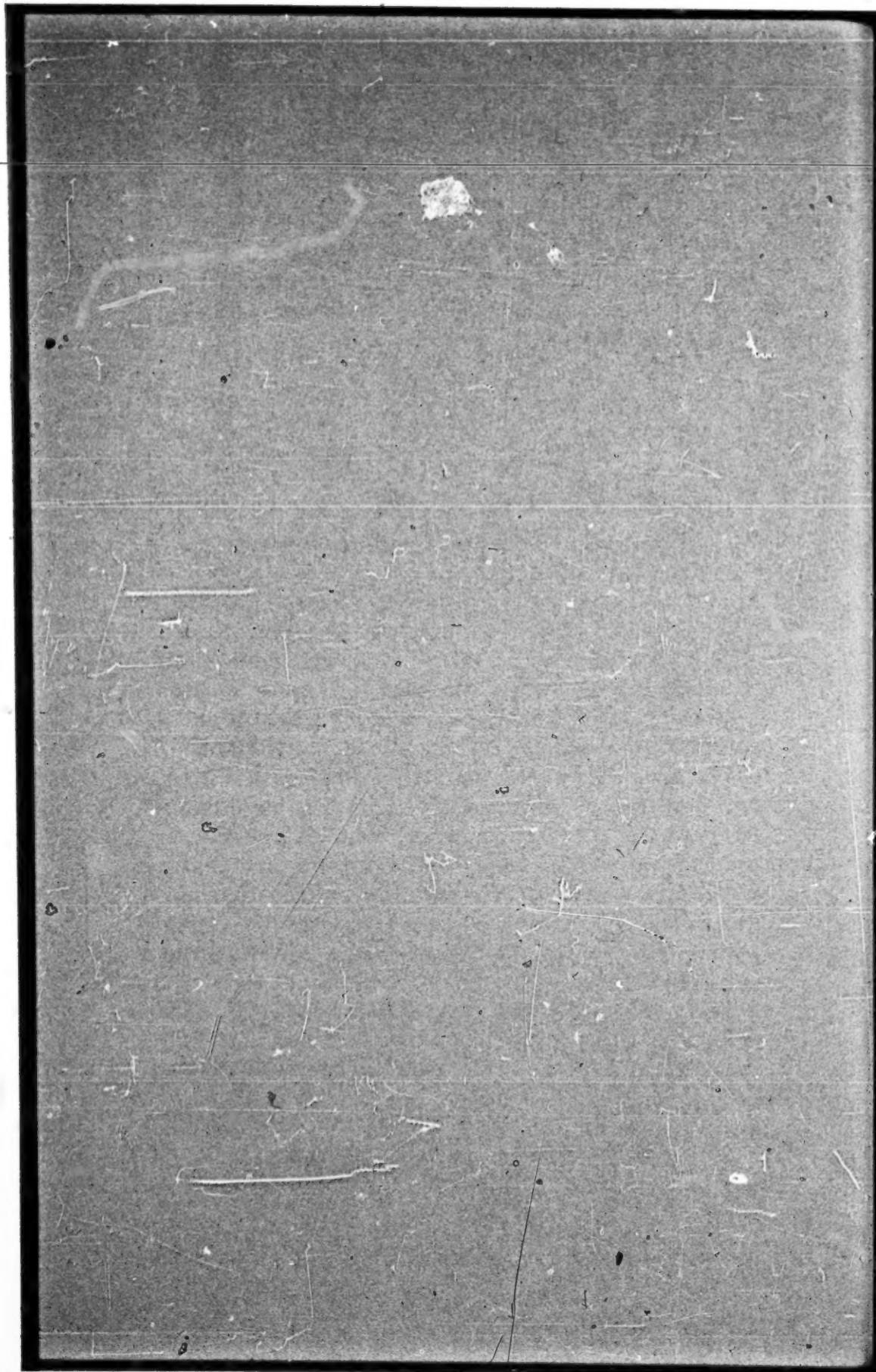
CONCLUSION

Based on the foregoing and matter in the elaborate briefs in the record on appeal, appellant respectfully submits that the inequities and issues of national importance presented should prompt the United States Supreme Court to exercise its jurisdiction in this case as the matter uncovered and exposed will result in better national administration of justice and perhaps even get licenses to practice law for universities so the public will know, understand, respect and scrutinize their conduct keeping their actions ethical. In case the court desires a full and more comprehensive survey than an individual can afford to make appellant is agreeable to forma pauperis assistance which is the mode Congress provides for the court to investigate court actions in order to have better courts.

Respectfully submitted,

TILDEN W. JOHNSON

In Propria Persona



Tilden W. JOHNSON, Plaintiff and Appellant,

v.

FORD MOTOR COMPANY and Goodyear Tire & Rubber Company, Defendants and Respondents.

Civ. 34477.

Court of Appeal, Second District, Division 5.

June 30, 1970.

Rehearing Denied July 17, 1970.

The Superior Court, Los Angeles County, Robert W. Kenny, J., denied motion for reconsideration of demurrer or for judgment of dismissal and denied motion to tax costs and movant appealed. The Court of Appeal, Reppy, J., held that where plaintiff appealed from order of dismissal entered after demurrers to three counts of complaint were sustained and trial on remaining counts resulted in findings for defendants on their affirmative defenses, judgment sustaining trial court's orders entered by appellate court precluded further examination of merits of demurrer point and motion thereafter to trial court to reconsider demurrers or to again dismiss causes of action was inappropriate and that without specific showing that costs incurred by prevailing appellee were excessive, costs resulting from appellee's use of printed brief rather than mimeographed brief as had been done by appellant could not be deemed unreasonable.

Affirmed.

1. Appeal and Error ⇐182

One cannot appeal from order sustaining demurrer without leave to amend.

2. Dismissal and Nonsuit ⇐65

Provision relating to dismissal of action not brought to trial within five years is not applicable to bar court from taking cognizance of situation wherein no dismissal has been sought by either party. West's Ann.Code Civ.Proc. §§ 581, subd. 3, 583.

3. Pleading ⇐218(3)

Where motion is made to reconsider order sustaining demurrers without leave to amend, or, in alternative, to enter judgment of dismissal, court, in proper case, must either overrule demurrer on reconsideration or enter judgment of dismissal.

4. Dismissal and Nonsuit ⇐60

Where demurrers were sustained to three counts of complaint and trial on remaining counts resulted in findings for defendants on their affirmative defenses, order dismissing action was dismissal as to all counts. West's Ann.Code Civ.Proc. § 581, subd. 3.

5. Appeal and Error ⇐1185(3)

Where plaintiff appealed from order of dismissal entered after demurrers to three counts of complaint were sustained and trial on remaining counts resulted in findings for defendants on their affirmative defenses, judgment sustaining trial court's orders entered by appellate court precluded further examination of merits of demurrer point and motion thereafter to trial court to reconsider demurrers or to again dismiss causes of action was inappropriate. West's Ann.Code Civ.Proc. §§ 581, subd. 3, 583.

6. Costs ⇐258

Without specific showing that costs incurred by prevailing appellee were excessive, costs resulting from appellee's use of printed brief rather than mimeographed brief as had been done by appellant could not be deemed unreasonable. Cal.Rules of Court, rule 26.

Tilden W. Johnson, in pro per.

Haight, Lyon, Smith & Nye and Charles B. Smith, Los Angeles, for respondent Ford Motor Co.

No appearance for respondent Goodyear Tire and Rubber Co.

A-1

I. STATEMENT AND BACKGROUND OF THE CASE

REPPY, Associate Justice.

Appeals in two cases are consolidated for our consideration under our number Civil 5407 and are dealt with in this one opinion. The two superior court cases appealed are No. 721,931 (order denying motion to vacate order awarded to respondent Ford Motor Company (Ford) in appellant Thilen W. Johnson's (Johnson) unsuccessful prior appeal (Civ.No. 5078)) and order denying motion to reconsider demurrers of Ford and respondent Goodyear Tire & Rubber Company (Goodyear) to counts I, III and V of the third amended complaint or to (again) dismiss said counts) and No. 722,427 (order denying motion to vacate order awarded to Ford in Johnson's unsuccessful prior appeal (Civ.No. 5078)).[1]

A brief chronological background of the cases is in order:

In 1957 plaintiff brought an action against Ford and Goodyear in the federal district court alleging negligent manufacture of an automobile and tires by which he was subsequently injured in an accident. This action resulted in a final judgment on the merits for the defendants.

In 1959 plaintiff brought superior court action No. 721,931 against the same defendants on the theories of strict liability, breach of warranty and false representations in advertising, set out in six counts. Counts I, III and V concerned express warranty, Civil Code, section 3314, and asserted abuse of process to obtain engineering information; counts II, IV and VI concerned implied warranty, product liability and fraudulent advertising. The incident upon which the suit was based was the same one which had been involved in the prior federal court suit. Demurrers without leave to amend were sustained to counts I, III and V. The first segment of a trial, bifurcated to allow disposition of affirmative defenses first, was had on the remaining three counts. The defendants prevailed on the basis of their three affirmative defenses—res judicata, collateral estoppel and statute of limitations. A final judgment against plaintiff was entered and filed on July 18, 1961, which directed dismissal of the entire action.

While the above case was pending, plaintiff filed against Ford the action numbered 722,427, wherein he sought recovery for the value of certain engineering information for product improvement which was allegedly gained by Ford from plaintiff when it was revealed in the litigation which followed the 1958 accident. Following service of the summons in this action, counsel for Ford moved for an order requiring plaintiff to furnish a security deposit pursuant to Code of Civil Procedure, section 391.1 (vexatious litigant). The trial judge found plaintiff to be a vexatious litigant under the terms of the statute and directed him to furnish a specified security deposit. Plaintiff did not make any security deposit. On February 16, 1962, defendant Ford moved the court to dismiss the action for failure of plaintiff to file the required security. This motion was granted, and a judgment of dismissal issued.

Plaintiff appealed separately from the adverse judgments of dismissal in each of the two superior court cases. On February

1. Johnson's notice of appeal in No. 721,931 is directed at both the denial of his motion to vacate the [illegible] and the denial of the motion to reconsider demurrers to (or [illegible] dismiss counts I, III and V, as to which both Ford and Goodyear are involved. The clerk of the superior court sent notice of the filing of the appeal to both Ford and Goodyear. Johnson's proof of service shows copy of plaintiff's designation of record on appeal being mailed to both Ford and Goodyear. Counsel for Ford, after the filing of plaintiff's opening brief, mailed a letter to this court, with a copy to Johnson, advising it felt that the opinion by division two in Civ.No.5078 disposed of the demurrer problems and appeared at the time set for oral argument and waived it when Johnson submitted a letter in lieu of oral argument. Goodyear filed no brief or letter in lieu thereof and did not appear at oral argument.

A-2

29, 1968, in two opinions certified for nonpublication, division two of this judicial district affirmed the judgments of the trial courts in their entirety. Petitions for rehearing in both cases were denied by division two on March 21, 1968. Petitions for hearing before our Supreme Court were denied on April 24, 1968. Defendants were allowed costs on appeal in each of the cases. Ford filed a cost bill relating to the appeals in each case. Goodyear did not file a cost bill in the case in which it was involved.[2]

II. POINTS BROUGHT UNDER REVIEW BY THIS APPEAL.

On May 13, 1968, plaintiff filed a document entitled "Notice of Plaintiff Motion to Vacate Judge Rels. H. Peters Sept. 19, 1963 Demurrer Sustaining Without Leave To Amend Causes I, III, V, Order Trial or Amendment, or Dismiss for Improbability * * *" together with points and authorities. This motion was directed at superior court case No. 721,931, wherein the demurrers without leave to amend had been sustained to three of the six counts stated in plaintiff's complaint. The motion was heard on May 24, 1968[1] and denied. Plaintiff appeals from the order of denial.

On June 3, 1968, plaintiff filed a document in each case entitled, "Notice of Motion to Tax Costs," together with points and authorities, alleging that in both cases, Nos. 721,931 and 708,427, defendant Ford had spent excessive amounts in printing briefs and that therefore it should bear the costs above that which was reasonable. On June 24, 1968, the motions were heard on a consolidated basis and denied. Plaintiff appeals from each order of denial.

1. *Alleged failure to dismiss three counts and claimed lack of appealability thereof:*

Plaintiff's motion of May 13, 1968, asked Judge Kenny to reconsider and decide upon Judge Peters' 1963 ruling sustaining demurrers to counts I, III and V of plaintiff's complaint without leave to amend, or, in the alternative, to (again) enter a judgment of dismissal as to the three counts so that plaintiff could gain standing to appeal.

[1-4] One cannot appeal merely from the order sustaining a demurrer without leave to amend. (3 Witkin, Cal. Procedure, Appeal, § 19, p. 3120; Mitchell v. Mutchnick, 111 Cal.App.2d 868, 870, 292 P.2d 757.) Further, the five-year provision of Code of Civil Procedure, section 583, is not applicable to bar a court from taking cognizance of a situation wherein no dismissal had been sought by either party (see Code Civ.Proc., § 581, subd. 3). In a proper case, the trial court must either overrule the demurrer on reconsideration or enter a judgment of dismissal. (Borri v. Superior Court, etc., 43 Cal.2d 800, 820, et seq., 279 P.2d 8.) However, in the instant case, the record reflects that there was a judgment of dismissal of the counts as to which the demurrers were sustained without leave to amend. After the demurrers were so sustained, the defendants, Ford and Goodyear, did not specifically move to have these counts dismissed; nor did plaintiff so move so he could have under Code of Civil Procedure section 581, subdivision 3. The parties went to trial on the initial phase as to the remaining three counts.[3] After the trial court found for defendants, sustaining their affirmative defenses as to each of the remaining counts, the trial court signed a judgment which adjudged, "That the above-entitled action [No. 721,931] be and the same is hereby dismissed." This is clearly a dismissal as to all six counts set out in superior court case No. 721,931. Thus, at that point, plaintiff had standing to assert that the trial court erred in sustaining the demur-

2. Goodyear had simply adopted Ford's brief as its own and apparently had no costs.

3. In Borri v. Superior Court, etc., supra, 43 Cal.2d 800, 279 P.2d 8, the demurrer which was sustained was to the entire cause of action and not to individual counts. Thus, in Borri, unlike the instant case, after the demurrer was sustained without leave to amend, no trial was held on remaining issues.

A-3

ven in his previous appeal decided in [illegible] (Civ.No.28732). Johnson's notice of appeal in Civ.No.28732 (S.Civ.No.726,931) is endorsingly expressed. In one part he appeals from the dismissal of counts II, IV and VI based on the sustaining of the affirmative defenses. There is no separate specifically appealing from the dismissal of counts I, III and V based on the sustaining of demurrers without leave to amend. In any event, under a heading in his brief entitled, "Errors in [Judge] Power's Ruling on Ford and Goodyear Demurrers to the Complaint" Johnson did in fact argue that the court erred in sustaining the demurrers without leave to amend.

And finally, the Court of Appeal specifically found no error in the trial court's sustaining of these demurrers.[4]

(5) Thus, plaintiff has had his appellate day in court on this point. The judgment of division two, by the doctrine of res judicata, precludes any further examination of the merits of the demurrer point. It is clear that plaintiff, when before Judge Kenny either ignored or misconstrued the fact that he had unsuccessfully appealed the rulings on the demurrers following the trial court's dismissal of the entire action. His trial court motion thereafter to have the demurrers reconsidered or to have the causes of action again dismissed was entirely inappropriate. The order of the trial court denying the belated, unreflective motion was proper.

2. *The taxing of costs on appeal:*

(6) In his written consolidated motion and in his oral argument thereon, plaintiff asserted that defendant Ford had claimed an excessive sum as the cost of printing briefs for the prior two appeals decided by division two on February 23, 1968. Plaintiff claims that he first submitted a brief that had been mimeographed and that the expense to defendant, if it had used a similar process, would have been approximately half of what it was by reason of its having used the printing process of a commercial printing house specializing in briefs. The governing provision is rule 26 of the California Rules of Court which allows to the "prevailing party . . . the reasonable cost of printing or reproduction of briefs by other process of duplication." The trial judge held that, without more of a specific showing by plaintiff that defendant's costs were excessive, it could not be said, as a matter of law, that the costs applied for were "unreasonable" within the terms of the rule. This holding was correct. (Harmon v. Pacific Tel. & Tel. Co., 250 Cal.App.2d 423, 434–435, 58 Cal.Rptr. 118.)

Johnson's reference to a claimed invalidity of Judge Moor's order requiring security in S.C.No. 702,427 is out of place in this appeal. It is not involved in what was noticed and, in any event, was determined in Civ.No. 28731.

III. DISPOSITION

1. The order denying plaintiff's motion for reconsideration of demurrers or, in the alternative, for an order dismissing counts I, III and V of case No. 721,931 is affirmed.

2. The order denying plaintiff's motion to tax costs on appeal in the consolidated hearing for cases Nos. 721,931 and 702,427 is affirmed.

STEPHENS, Acting P. J., and AIDO, J., concur.

4. The part of the opinion of division two in Civ.No.28732 which covers this point, states: "[Plaintiff] contends that errors were made in rulings on demurrers [and various other matters]. . . . It would unduly prolong this opinion to discuss these matters separately and in detail. Suffice it to say, we have reviewed the record with respect to each of plaintiff's contentions and we find no prejudicial error." (Unpublished opinion at pages 17–18.)

A-4

POST CARD

CLERK'S OFFICE
Court of Appeal
SECOND DISTRICT

CALIFORNIA STATE BUILDING, ROOM 1201
CIVIC CENTER
LOS ANGELES, CALIF. 90012

Tilden W. Johnson

5630 Santelle Blvd.

Culver City 90230

California

Los Angeles, Cal. July 17, 1970

TITLE { Johnson
Ford Motor Co. et al } No. 34477

34477

The Court:

Petition for rehearing denied.

CLAY ROBBINS, Clerk

EXHIBIT "B"

Order Due
August 28, 1970

ORDER DENYING HEARING

Rappin
5-24

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 5, Civil No. 34477

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED

AUG 26 1970
WILLIAM I. SULLIVAN, Clerk
By _____ Deputy

JOHNSON

v.

FORD MOTOR COMPANY ET AL.

Appellant's petition for hearing DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 28th day of September A.D. 1970

WILLIAM I. SULLIVAN

By R. Johnson
Deputy Clerk

WRIGHT, C.J.

Chief Justice

EXHIBIT "C"

Insured

FORD Foundation Annual Report 1964

	FACE AMOUNT (in thousands)	COST	MARKET (approximate)
Special Deposits			
Brooklyn Savings Bank	$1,054	$1,054,266	$1,054,266*
Buffalo Savings Bank	2,108	2,108,398	2,108,398*
Dime Savings Bank of Brooklyn	1,045	1,045,192	1,045,192*
Dry Dock Savings Bank	4,217	4,217,036	4,217,036*
Greater New York Savings Bank	6,849	6,848,843	6,848,843*
Long Island City Savings Bank	2,636	2,635,648	2,635,648*
New York Bank for Savings	6,853	6,852,515	6,852,515*
South Brooklyn Savings Bank	1,570	1,570,366	1,570,366*
Union Square Savings Bank	527	526,804	526,804*
	$26,859	$26,859,068	$26,859,068
Total — Fixed and Special Deposits	$64,695	$64,695,878	$64,695,343

Common Stocks

	SHARES	COST	MARKET (approximate)
Bank, Insurance, and Finance			
Aetna Life Insurance Co.	23,000	$2,584,792	$4,209,000
American Express Co.	39,500	1,996,763	1,846,625
American Security & Trust Co. and affiliate, American Security Corp.	30,000	832,803	1,725,000
Atlantic Acceptance Corp.	25,000	485,469	406,250
Bank of America N.T. & S.A.	43,000	2,380,392	3,013,375
Chase Manhattan Bank	23,000	1,569,313	1,828,500
Crocker-Citizens National Bank	50,000	2,271,060	2,487,500
Federal Insurance Co.	27,500	1,821,586	2,048,750
First National Bank of Atlanta	32,000	1,729,831	2,152,000
First National Bank of Chicago	50,000	2,994,866	2,850,000
First National City Bank (N.Y.)	11,500	1,283,231	1,449,000
Georgia International Life Insurance Co.	75,000	750,000	2,662,500
Insurance Co. of North America	26,300	2,504,042	2,393,300
Life Insurance Co. of Virginia	19,000	1,032,329	1,249,250
Morgan Guaranty Trust Co.	21,500	2,359,640	2,353,125
National State Bank of Newark	37,000	1,603,663	1,392,125
Travelers Insurance Co.	104,000	3,094,337	4,719,000
Trust Co. of Georgia	2,000	221,700	280,000
United Virginia Bankshares	13,500	609,214	725,625
Wachovia Bank & Trust Co.	83,500	2,539,917	3,120,813
Western Bancorporation	73,000	2,552,563	3,120,750
Whitney Holding Corp.	28,500	1,495,638	1,496,250
		$38,713,149	$47,730,738

EXHIBIT "D"

*Shown at cost—market quotation not available.

Attorney Given 1 to 5 Years for Soliciting Bribe to Quash Probe

Sought $35,000 to Quiet Inquiry Into Mysterious Disappearance of Woman

BY DOUG SHUIT
Times Staff Writer

Beverly Hills attorney Jerome Weber, 58, was sentenced to state prison for one to five years Monday for soliciting a $35,000 bribe to quash a district attorney's investigation.

However, Superior Judge Charles H. Older, after rejecting a motion for a new trial and denying probation, allowed Weber to remain free on his own recognizance pending an appeal.

Weber's attorney, James P. Cantillon, said the appeal would take "at least three years."

Weber, whose clients include many film personalities, was convicted June 8 of soliciting $35,000 to suppress an investigation of one of his clients, Thomas Edward Devins, 30, who is charged with murdering a wealthy West Los Angeles woman in 1968.

At the time of the solicitation of the bribe, district attorney's investigators were investigating the disappearance of Mrs. Norma Carty Wilson, 57, who mysteriously disappeared in Europe during a business trip she took with Devins.

'An Insurance Policy'

Devins reportedly testified at a county grand jury hearing that Weber said he could purchase "an insurance policy" from two friends in the prosecutor's office and that the investigation of the Wilson murder would be placed in "the inactive files."

Of the $35,000, Weber was to have received $10,000 and $25,000 was to have been paid to friends in the district attorney's office.

George Stoner and George Murphy, the two district attorney's investigators named by Weber as his contacts, denied any complicity in the case and were supported by Dist. Atty. Evelle J. Younger, who said there was no evidence of any impropriety on their part.

During the trial, four tape recordings were introduced into evidence. Weber bragged on the tapes that because of his "influence" he could "control" the inquiry into Mrs. Wilson's disappearance.

Jerry Weber
Times photo

Devins, who claims he last saw Mrs. Wilson at a hotel in Geneva on Nov. 24, 1968, was charged in April with her murder and with swindling her out of property.

She reportedly was shot to death on a remote road in Switzerland after an aborted plot to free the late Congolese leader, Moise Tshombe, from imprisonment in Algeria.

An appeal for leniency was made by Weber's attorney before sentencing.

Cantillon said his client, a member of numerous civic and charitable organizations, had already suffered enough, that he had lost his prosperous law practice and that the trial had been a hardship on Weber's wife and four children.

"The penalty he is suffering because he is an attorney is far greater than an ordinary person would suffer," Cantillon said, asking that his client be given probation.

However, Judge Older, in passing sentence, said a prison sentence in the case "stands as the punishment

Please Turn to Page 23, Col. 1

Continued from Third Page

not only to Mr. Weber but also as a deterrent to other members of the legal profession" who would get involved in illegal activities.

"I think the sentence in this case has to stand as a clear warning to others," Judge Older said.

Weber, who has been practicing law since 1936, is an honorary life member of the DeMolay Legion of Honor, and served on the mayor's Community Advisory Committee.

He also is a former "Man of the Year" of B'nai B'rith Hollywood Lodge, Temple Ner Tamud of Van Nuys and the West Valley Shrine Club.

Weber said in his probation report: "Insofar as punishment is concerned, no words can express the agony that I have suffered as the result of the indictment, the trial, the decision and its attendant publicity."

This exhibit is submitted to show similarity of Foundation defendant stockholder giving to give Harvard, USC and Stanford judgeship preference per their annual statements and Court influence over torts, to avoid this type of involvement Harvard, USC and Stanford former rulings must be interpreted to show Federal Court issued in 1958 a 54b piecemeal judgment ruling for defendants in negligence and plaintiff in express warranty from ads. Likewise Judge Hill by finding a limited his action dismissal to just causes II, IV and VI.Calif. Appellate Court in opinions in appeals 30752 and 30751 in effect and non-appealable. Roe Goodyear and/or Ford should with provisions of U.S.Const. 14th amendment and and Johnson v. Ford, Sup.Ct. 798,427 restored to

Appendix E

Topping to Resign as USC President

BY JOHN DREYFUSS
Times Staff Writer

Dr. Norman Topping, who in 12 years as president of USC enriched the school both financially and academically, said Monday he will resign as soon as a replacement can be found.

The 62-year-old administrator gave no specific reason for his action, but said he is taking it "now, while my health is still reasonably good."

Persons close to the president said he has a minor heart ailment which strongly influenced his decision to step down three years before mandatory retirement age.

Topping said his retirement will be spent "helping the university, in any way the trustees desire."

It was learned that the trustees have already discussed with Topping the possibility of his becoming USC's chancellor—a position less rigorous in its demands than that of president.

However, the trustees want to discuss with Topping's replacement the possible appointment of Topping to the chancellorship before making an official offer. It is expected the offer would be accepted.

"Dr. Topping's contributions to the

Please Turn to Page 21, Col. 1

Topping Will Resign as President of USC

Continued from First Page

university have been so monumental that it would be unthinkable for him not to continue his identification with USC for many years to come," said Justin Dart, chairman of the board of trustees.

Topping said he might be able to serve USC by fund raising, at which he has been highly successful, and by helping his replacement cultivate good relations with persons important to the university, if the new president desired such help.

A committee of students, faculty, administrators and trustees will seek the new administrator with trustees making the final selection. Topping said he hopes that selection will be made within a year.

A popular and effective administrator, Topping received accolades from faculty and student representatives Monday.

"He has a genius for leadership," said Dr. James H. McBath, 45, chairman of the faculty senate at USC.

"He always has an open door policy for students and faculty. Once one gets inside that door, Dr. Topping senses the heart of the matter under discussion and quickly makes that discussion highly productive."

"He is extremely well liked and greatly admired among the students," said Fred Minnes, 21, of San Rafael, USC's student body president.

When Topping became USC's seventh president, he took over a university with a reputation for academic mediocrity except in a few professional areas such as dentistry, medicine and pharmacy.

Under Topping, USC developed an excellent reputation in the sciences and engineering and in most of its graduate and professional schools.

In his years as president, more than $60 million worth of new buildings have been constructed, faculty salaries have increased significantly, federal research support has skyrocketed to $28 million from $2 million in 1930, and test scores indicate a consistent improvement in the ability of students.

Endowment has quadrupled to about $35 million, and since 1961 USC raised $155 million.

A native of Flat River, Mo., and the son of a physician, Topping was graduated from Los Angeles High School and USC. He was graduated from USC medical school in 1936.

Note USC like Harvard and Stanford by engaging USC Alumni to act as a de facto law firm, public relations firm lobbying laws through Bar Association branch offices picked up de facto fees of $155,000.000.00 from 1961 thru April 1970, their alumni in Superior Court and Court of Appeals tying up appellant Johnson's tort claims while USC received reportedly about $50,000,000.00 from sued stockholders of involved insurance companies, Ford Foundation, and Bar.

Exh. "F"